

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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WORLD WRESTLING  
ENTERTAINMENT, INC. and  
WWE LIBRARIES, INC.,

Plaintiffs,

v.

AWA WRESTLING ENTERTAINMENT,  
INC., and DALE R. GAGNER, an  
individual, a/k/a DALE R. GAGNE, a/k/a  
DALE GAGNE,

Defendants.

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Civil Action No. 07-2058 ADM/JSM

**PLAINTIFFS' MEMORANDUM OF  
LAW IN SUPPORT OF THEIR  
MOTION FOR ENTRY OF DEFAULT  
AGAINST DEFENDANT AWA  
WRESTLING ENTERTAINMENT, INC.**

Plaintiffs World Wrestling Entertainment, Inc. and WWE Libraries, Inc.

(collectively, "WWE"), by and through their undersigned counsel, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, respectfully move for the entry of default against Defendant AWA Wrestling Entertainment, Inc ("AWA").

**INTRODUCTION**

Defendants Dale Gagner and AWA have ignored numerous requests by both the Court and WWE to obtain counsel for AWA. It is well-settled law in the District of Minnesota that a corporation such as AWA may not appear in Court, file pleadings or other papers, or otherwise litigate a civil action without counsel. Accordingly, in view of Defendants' unwillingness to resolve this matter informally, Plaintiffs respectfully request an Order entering default against Defendant AWA.

**FACTUAL BACKGROUND**

WWE commenced this action on April 25, 2007 by filing a Complaint against Dale R. Gagner ("Gagner") and AWA (collectively, "Defendants"), seeking injunctive

and monetary relief resulting from Defendants' willful infringement and unlawful exploitation of WWE's AMERICAN WRESTLING ASSOCIATION and AWA trademarks.

Gagner and AWA were personally served with a Summons and copy of the Complaint on April 26, 2007. (Return of Service of Summons, Docket No. 6; Complaint, Docket No. 1; Declaration of Surya Saxena ("Saxena Decl.") at ¶ 3). Gagner claims to be the President and Chief Executive Officer of AWA.

On May 15, 2007, Gagner, appearing *pro se*, filed an Answer to the Complaint purportedly on behalf of himself and AWA. (Answer, Docket No. 5; Saxena Decl. ¶ 4).

On June 25, 2007, the parties participated in a Rule 16 pretrial conference before United States Magistrate Judge Janie S. Mayeron. At the conference, Judge Mayeron specifically advised Gagner that he could not represent or act on behalf of AWA in this action and directed Gagner to expeditiously obtain counsel for the corporation.

On August 1, 2007, over one month after the parties' pretrial conference, WWE's counsel sent Gagner a letter that, among other things, inquired whether Gagner had obtained legal counsel for AWA in accordance with the Court's directive. (Saxena Decl. Ex. A). WWE's counsel further advised Gagner that if counsel were not obtained, WWE intended to request an entry of default against AWA (*Id.*).

Gagner responded to WWE's August 1, 2007 letter via e-mail on August 7, 2007, but did not state whether legal counsel for AWA Wrestling Entertainment, Inc. had been obtained. (Saxena Decl. Ex. B). After receiving Gagner's response, WWE repeatedly attempted to contact Gagner to schedule a telephone conference with Judge Mayeron to

discuss the retention of counsel for AWA. (Saxena Decl. Ex. C). Gagner refused to schedule such a conference. (Saxena Decl. Ex. D).

To date, no attorney or legal representative has entered an appearance in this action on behalf of AWA. (Saxena Decl. ¶ 5).

### **ARGUMENT**

Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.”

It is well settled that a corporation may not be represented *pro se* and can only appear in a judicial proceeding through legal counsel. *See, e.g., Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996) (“the law does not allow a corporation to proceed *pro se.*”); *Simitar Entm’t, Inc. v. Silva Entm’t, Inc.*, 44 F. Supp. 2d 986, 990-91 (D. Minn. 1999) (holding that regardless of individual defendant’s status as owner, director or officer of corporate defendant, individual defendant’s *pro se* filing was “inoperative” as to the corporate defendant); *The Antioch Co. v. Scrapbook Borders, Inc.*, 210 F.R.D. 645, 646 n.1 (D. Minn. 2002) (recognizing that a corporation is not permitted to rely on the filings of an individual *pro se* defendant and stating that if the corporate defendant did not obtain counsel, the court “may have to consider a Motion for Default Judgment against the corporation.”).

Gagner’s Answer to the Complaint was inoperative as to AWA. Therefore, AWA has failed to plead or otherwise respond to WWE’s Complaint. Moreover, Gagner has

ignored this Court's directive to obtain counsel for AWA Wrestling Entertainment, Inc. at the June 25, 2007 Rule 16 conference as well as WWE's patient attempts to resolve this issue without motion practice. Gagner's *pro se* status is no excuse for his failure to comply with WWE's and the Court's requests that he obtain counsel for AWA.

Accordingly, WWE is entitled to an entry of default against Defendant AWA Wrestling Entertainment, Inc. *See Stephenson v. Deutsche Bank, et. al.*, Nos. 02-4845 (MJD/ AJB), 2007 WL 763087, at \*17-18 (D. Minn. March 9, 2007) (granting default judgment for failure to plead because defendant corporation's attempt to answer complaint *pro se* was invalid).

### **CONCLUSION**

Based on the foregoing and all of the files, records, and proceedings herein, Plaintiffs World Wrestling Entertainment, Inc. and WWE Libraries, Inc. respectfully request that a default be entered against Defendant AWA Wrestling Entertainment, Inc.

Dated: September 14, 2007

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